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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,573	11/24/2003	Thomas McKevitt	9249-55U1	5712

570 7590 06/13/2005

AKIN GUMP STRAUSS HAUER & FELD L.L.P.  
ONE COMMERCE SQUARE  
2005 MARKET STREET, SUITE 2200  
PHILADELPHIA, PA 19103

EXAMINER
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GRAHAM, MARK S

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/720,573

Applicant(s)

MCKEVITT ET AL.

Examiner

Mark S. Graham

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7 and 9-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7 and 9-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 11, "the head portion" lacks proper antecedent basis.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Adorjan '749 (Adorjan). Elements 12 may be considered the plugs. Adorjan's elements 12 have different lengths as can clearly be seen in the drawings. Regarding the total length of the plugs and weights, Adorjan's weights and plugs match the total length of the internal cavity as again can be clearly seen in Fig. 2. With regard to applicant's amendments, the threaded part of Adorjan's end closing element is considered the plug with the portion of such element extending beyond the terminal end being considered the extraction member.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore. Moore discloses the claimed device with the exception of the sleeve. However, the examiner takes official notice that it is commonly known to encase springs in sleeves if desired as a protective

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measure. It would have been obvious to one of ordinary skill in the art to have done the same with Moore's spring for the same reason.

Claims 1 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adorjan '489 in view of Lancot. Adorjan '489 discloses the claimed device and method with the exception of the type of fastening element used. Adorjan uses threads but as disclosed by Lancot plug type fastener's for cylindrical sporting elements may use a variety of fastening elements, (Col. 5, lines 43-52). It would have been obvious to one of ordinary skill in the art to have used such as Adorjan's fastening elements as well if it was desired to make it easier to remove the plug element of Adorjan.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adorjan '749. Adorjan discloses the claimed method with the exception of specifically stating that a different number of weight rods are inserted after removing first weight rods. However, as Adorjan states in lines 10-14, an object of the invention is the regulation of the weight of the cue as well as its balance. Obviously to change the weight of the cue one must change the weight elements. It would have been obvious to one of ordinary skill in the art that to have added additional weight to the cue it would have made sense to use more weight elements thus increasing the weight of the cue. Therefore, the use of a different number of weight elements would have been obvious to the ordinarily skilled artisan. With regard to applicant's amendments, the threaded part of Adorjan's end closing element is considered the first plug with the portion of such element extending beyond the terminal end being considered the extraction member.

Claims 2, 4-7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laub in view of Morse. Laub discloses the claimed device/method with the exception of using a

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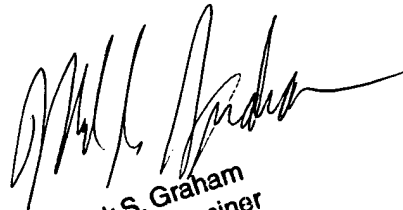
plurality of removable weights and the end cap plug. However, as disclosed by Morse it is known in the art to use a plurality of removable weights to adjust the cue to the particular user and to use an end cap plug completely received in a second cavity of larger diameter including its head portion. It would have been obvious to one of ordinary skill in the art to have done the same with Laub's cue as well to allow for greater cue adjustability and to seal off the weight containing cavity.

Concerning claims 4-7, absent a showing of unexpected results the exact dimensions and weights of the Laub/Morse weights would obviously have been up to the ordinarily skilled artisan depending on the degree of weight and balance one wished to provide for the stick.

Applicant's arguments with respect to claims 1, 2, 4-7, and 9-14 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG  
6/8/05



Mark S. Graham  
Primary Examiner